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**VIA ECF**

The Honorable Judith C. McCarthy  
United States District Court, Southern District of New York  
United States Courthouse  
300 Quarropas Street, Chambers 533  
White Plains, NY 10601-4150

Re: **Maurice Konig v. Bank of America, N.A., et al.**; Case No. 7:18-cv-07299

Dear Judge McCarthy:

In accordance with SDNY Local Rule 37.2, Defendant Bank of America, N.A. ("BANA") submits this pre-motion conference letter to inform the Court of its intention to file a motion to strike Plaintiff's October 22, 2019 Expert Witness Disclosure and his October 27, 2019 Supplemental Expert Witness Disclosures as untimely and prejudicial to BANA's preparation of its defense of this case.

By way of factual background, Plaintiff's First Amended Complaint raises concern with the credit reporting on four mortgage loans secured by four different properties. Am. Compl. ¶ 8. Plaintiff alleges that he stopped making payments on the four loans at issue in 2008 or 2009, "leaving a balance due," foreclosure proceedings were initiated. Am. Compl. ¶¶ 9-10. BANA stopped servicing all of the loans effective November 1, 2012, when servicing responsibilities were transferred to other loan servicers.

In his First Amended Complaint, Plaintiff asserts one count against BANA for violation of the Fair Credit Reporting Act ("FCRA"), and he alleges that BANA's co-defendants, Trans Union and Equifax, are reporting one or more negative trade lines on his credit report relating to the loans. The basis for Plaintiff's FCRA claim against BANA is that a negative trade line may only remain on the report of a consumer for seven and a half years from the date of the last payment. See Am. Compl. ¶¶ 10-11.

On November 30, 2018, the Court issued its scheduling order which, in part, imposed a deadline of April 5, 2019 for Plaintiff to disclose his experts and produce expert reports. Doc. 26. Although the Court subsequently extended the fact discovery deadline to July 26, 2019, the expert report deadline was not specifically extended. Thus, the April 5, 2019 deadline remained in place. Nonetheless, more than six months after the April 5, 2019 deadline, Plaintiff served his October 22, 2019 Expert Witness Disclosure and his October 27, 2019 Supplemental Expert Witness Disclosures, in which he designates Evan D. Hendricks and Thomas A. Tarter as expert witnesses.

Plaintiff's untimely disclosure is prejudicial to BANA because the expert disclosure deadline has long passed. In addition, fact discovery has closed. Plaintiff's untimely disclosure has deprived BANA of the opportunity to examine the purported expert witnesses on numerous topics in the report and from otherwise retaining its own rebuttal witnesses to testify at trial.


Plaintiff's disclosure is not only untimely but fails to comply with Fed. R. Civ. P. 26(a)(2) which provides that an expert's written report must contain "the facts or data considered by the witness in forming" all opinions the witness will express. Plaintiff has failed to provide BANA with sufficient information to engage in a meaningful examination of his experts.

To the extent the Court is not inclined to strike Plaintiff's expert reports as untimely, BANA respectfully requests a new scheduling order permitting additional time to obtain a rebuttal expert, to submit its rebuttal expert reports, and to depose Mr. Hendricks and Mr. Tartar on their reports and knowledge of BANA policy and procedure.

For all of these reasons, BANA respectfully requests a telephonic pre-motion conference and/or permission to proceed with filing its motion to strike Plaintiff's October 22, 2019 Expert Witness Disclosure and Plaintiff's October 27, 2019 Supplemental Expert Witness Disclosures and/or a revised scheduling order providing time for the expert discovery outlined above.

**SO ORDERED:**

Application denied in part and granted in part. The Court will allow additional expert discovery to be conducted. Defendants have until February 3, 2020 to serve their rebuttal expert reports. The parties will have until March 17, 2020 to complete all expert depositions.

  
JUDITH C. McCARTHY  
United States Magistrate Judge

Respectfully submitted,

/s/ Michael E. Blaine  
Michael E. Blaine